

**KNIGHT
FIRST AMENDMENT
INSTITUTE**

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October 11, 2019

Via ECF and Email

The Honorable Andrew L. Carter, Jr.
United States District Court
Southern District of New York
40 Foley Square, Room 435
New York, NY 10007

Re: *Knight First Amendment Institute v. U.S. Department of Homeland Security, et al., Case No. 17-CV-7572 (ALC)*

Dear Judge Carter:

Jointly with Defendants' counsel, the Knight First Amendment Institute at Columbia University (the "Knight Institute" or "Institute") respectfully submits this letter to supplement the parties' October 4, 2019 Joint Status Report, ECF No. 145, with a more detailed description of the agreed-upon new searches to be conducted by Immigration and Customs Enforcement ("ICE") for records responsive to the Institute's Freedom of Information Act ("FOIA") request (the "Request"). Additionally, the parties submit this letter to provide an update regarding the status of new searches conducted by the Department of Homeland Security ("DHS"), *see* ECF Nos. 129–31, 135, 137, and to inform the Court of the parties' negotiations regarding new searches for records responsive to Item 1 of the Request.

ICE's Search

In the order issued on September 16, 2019, the Court concluded that ICE had failed to conduct an adequate search for records responsive to the Knight Institute's Request and ordered ICE to conduct new searches. ECF No. 140, at 15–16 ("September 16 Order").

Pursuant to the September 16 Order, the parties have now met and conferred and reached agreement regarding the offices and components of ICE that will be searched and the search terms that will be used. Specifically, on October 3, 2019, ICE's counsel confirmed by email that ICE will conduct additional searches for documents responsive to Items 1 through 4 of the Request within the following offices

and components, excluding components implicated in ICE's pending motion for partial reconsideration of the September 16 Order, ECF No. 144:

- the Office of the Director;
- the Office of Policy;
- the Offices of Field Operation, Enforcement, and Removal within the Enforcement and Removal Operations Directorate;
- the Office of Enforcement and Removal Operations Law Division within the Office of the Principal Legal Advisor; and
- the National Security Unit and the National Security Investigations Division, Counterterrorism and Criminal Exploitation Unit within Homeland Security Investigations.

The parties will meet and confer regarding any searches to be conducted by the components implicated in ICE's motion for partial reconsideration after that motion has been decided, if necessary.

ICE further agreed to conduct the new searches using the following search terms where possible, as several of the components and offices do not have the technical ability to employ lengthy search strings:

Search 1 (for Items 2–4 of the Request)

- Search 1(a): (immigrant OR immigrants OR immigration OR alien OR aliens OR visa OR asylum OR asylee OR exclude OR excludes OR excluding OR exclusion OR deny OR denial OR denials OR refusal OR refusing OR refuse OR refuses OR refused OR removal OR removals OR remove OR removes OR removed OR removing OR removable OR vet OR vetting) AND (“endorse or espouse” OR “endorses or spouses” OR “endorsed or espoused” OR “endorsing or espousing” OR “foreign policy consequences” OR “ideological screening” OR “first amendment” OR “1st amendment” OR “protected speech” OR “political speech” OR “political belief” OR “political beliefs” OR “political association” OR “political associations”)
- Search 1(b): “1182(a)(3)(B)(i)(VII)” OR “212(a)(3)(B)(i)(VII)” OR “1182(a)(3)(B)(i)(IV)(bb)” OR “212(a)(3)(B)(i)(IV)(bb)” OR “1182(a)(3)(C)(i)” OR “212(a)(3)(C)(i)” OR “1182(a)(3)(C)(iii)” OR “212(a)(3)(C)(iii)” OR “1225(c)” OR “235(c)” OR “1227(a)(4)(B)” OR “237(a)(4)(B)” OR “1227(a)(4)(C)” OR “237(a)(4)(C)” OR “1158(b)(2)(A)(v)” OR “208(b)(2)(A)(v)”

Search 2 (for Item 1 of the Request)

- Search 2(a): (vetting OR screening OR screen OR screens OR exclude OR excludes OR excluding OR exclusion OR deny OR denies OR denial OR denials OR refusal OR refusing OR refuse OR refuses OR refused OR removal OR removals OR remove OR removes OR removed OR removing OR removable OR “additional scrutiny” OR “heightened scrutiny” OR “national security and public safety information” OR “national security and public-safety risk assessment”) AND (“social media” OR Facebook OR Twitter OR tweet OR tweets OR ideology OR ideological OR “first amendment” OR “1st amendment” OR

- “protected speech” OR “political speech” OR “political belief” OR “political beliefs” OR “political association” OR “political associations”)
- Search 2(b): “extreme vetting” OR “enhanced vetting” OR “visa lifecycle vetting” OR “continuous screening” OR “continuous vetting” OR “continuous monitoring” OR “13769” OR “13,769” OR “Protecting the Nation from Foreign Terrorist Entry into the United States” OR “13780” OR “13,780” OR “9645” OR “9,645” OR “Enhancing Vetting Capabilities and Processes” OR “9723” OR “9,723” OR “Maintaining Enhanced Vetting Capabilities and Processes” OR “Optimizing the Use of Federal Government Information” OR “National Vetting Enterprise” OR “National Vetting Center” OR “Visa Security”

Status of DHS’s Search

As the Court is aware, DHS conducted a new search for documents responsive to the Request, and after reaching agreement with the Institute on search terms and scope, DHS completed the searches on August 28, 2019. ECF No. 137. Those searches returned more than 120,000 potentially responsive documents.

DHS has now committed to completing its responsiveness review of those records and to reporting the total number of pages of responsive records that remain and require processing to the Court and to the Knight Institute by November 29, 2019. The parties have also agreed to submit a joint status report by December 6, 2019, proposing a schedule for the processing of responsive records. In the event that the parties cannot agree on a processing schedule, they will submit separate proposed processing schedules by that date.

Other Searches for Records Responsive to Item 1 of the Request

Pursuant to an agreement between the parties, United States Citizenship and Immigration Services (“USCIS”), Customs and Border Protection (“CBP”), Department of Justice Office of Information Policy (“OIP”) and Office of Public Affairs (“OPA”), and the Department of State (“DOS”) did not search for documents responsive to Item 1 of the FOIA Request, which seeks:

All directives, memoranda, guidance, emails, or other communications sent by the White House to any federal agency since January 19, 2017, regarding consideration of individuals’ speech, beliefs, or associations in connection with immigration determinations, including decisions to exclude or remove individuals from the United States.

ECF No. 42-2, at 3–4. Based on its understanding of the parties’ agreement, the Knight Institute did not challenge the searches conducted by USCIS, CBP, OIP, OPA, or DOS. The Court recently decided cross-motions for summary judgment regarding ICE’s and OLC’s searches and the exemption determinations made by DOS, ICE, and USCIS, and did not address any agency’s obligation, other than OLC, to search for documents responsive to Item 1. Nevertheless, in a good faith attempt to resolve this

litigation, USCIS, CBP, OIP, OPA, and DOS have agreed to conduct searches for records responsive to Item 1 of the Request, provided the parties can agree on a reasonable scope and timing for the searches.

The parties are currently negotiating the terms and timing of those searches.

* * *

We thank the Court for its attention to this matter.

Respectfully,

/s/ Carrie DeCell

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